HARRISON HEIGHTS
CONDITIONAL ANNEXATION AND ZONING AGREEMENT

This Harrison Heights Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into this ____ day of _____, 2006, by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), **Developments Unlimited, LLP**, a Nebraska limited liability partnership ("Developer").

RECITALS

A. Developer is the owner of Lots 5, 7, and 102, located in the SE 1/4 of the S 1/2 of Section 14, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska and Lots 9, 10, and 101, Irregular Tracts, located in the N 1/2 of the S 1/2 of Section 14, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska (collectively the "Property"). The Property contains approximately 90.58 acres of land generally located at North 89th Street and Leighton Avenue.

B. Developer has requested the City to annex the Property.

C. Developer has requested the City to rezone the Property from AG Agricultural District to R-3 Residential District.

D. Developer has requested the City to approve the Harrison Heights preliminary plat for 318 lots.

E. The City has adopted Ordinance No. 18113, hereinafter referred to as the "Impact Fee Ordinance" based upon an impact fee study prepared by Duncan Associates dated October 2002 that went into effect on June 2, 2003. This Impact Fee Ordinance enables the City to impose a proportional share of the cost of improvement to the water, wastewater systems, arterial streets, and neighborhood parks and trails, necessitated by and attributable to new development.

F. A Complaint for Declaratory and Injunctive Relief has been filed in the District Court of Lancaster County, Nebraska. This Complaint prayed for judgment of the district court declaring the Impact Fee Ordinance invalid and unenforceable and for injunctive relief enjoining the imposition of impact fees. The District Court found

the Impact Fee Ordinance to be valid and enforceable as an excise tax. The decision of the District Court has been affirmed by the Nebraska Supreme Court.

G. Pursuant to the Conditional Annexation and Zoning Agreement for Regent Heights 1st Addition and Northern Lights Addition ("Regent Heights Agreement"), the City and the developers of Regent Heights 1st Addition and Northern Lights Addition constructed certain sanitary sewer trunk lines (hereinafter "Sewer A" and "Sewer B") to sewer 254 acres of land within the preliminary plat of Regent Heights 1st Addition and Northern Lights Addition. Said Sewer A and Sewer B can also sewer 746 acres of land outside of the boundaries of the preliminary plat for Regent Heights 1st Addition and Northern Lights Addition, including the Property.

H. In the Regent Heights Agreement, the City agreed to charge owners of land outside the boundaries of the preliminary plats for Regent Heights 1st Addition and Northern Lights Addition who benefit from the extension of Sewer A and Sewer B into an entirely new area, including the Property, a fair share of the cost of Sewer A and Sewer B based upon a per-acre formula or some other fair share formula approved by the City.

I. Resolution No. A-79736 adopted by the City Council of the City of Lincoln on September 20, 1999 established a connection fee of $1570.00 per acre for those other property owners whose land is included within the 746 acres of land outside the preliminary plats for Regent Heights 1st Addition and Northern Lights Addition and sewerable by Sewer A and Sewer B.

J. The City is willing to annex the Property as requested by Developer provided Developer agrees to contribute $142,210.60 as Developer's fair share of the cost to construct Sewer A and Sewer B based upon the cost of $1,570 per acre times 90.58 acres being annexed.

K. The Property is located within a rural fire protection district. Neb. Rev. Stat. § 35-514 dealing with the City's annexation of territory from rural fire protection districts, provides in part that "(7) Areas duly incorporated within the boundaries of a municipality shall be automatically annexed from the boundaries of the district notwithstanding the provisions of §31-766 and shall not be subject to

further tax levy or other changes by the district, except that before the annexation is complete, the municipality shall assume and pay that portion of all outstanding obligations to the district which would otherwise constitute an obligation of the are annexed or incorporated." The City is willing to annex the Property as requested by Developer, provided Developer agrees to pay all costs needed for the City to pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the Property being annexed.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do agree as follows:

1. Annexation by the City. The City agrees to annex the Property.

2. Preliminary Plat. The City agrees to approve the Harrison Heights preliminary plat.

3. Change of Zone. The City agrees to approve a change of zone rezoning the Property from AG Agricultural District to R-3 Residential District.

4. Sewer A and Sewer B Connection Fee. Developer understands and acknowledges that the Property was made sewerable by the construction of Sewer A and Sewer B described in Recital G above and that Developer did not participate in, nor contribute Developer's fair share of the cost of construction of Sewer A and Sewer B to serve the Property. Developer therefore agrees to pay prior to connection a connection fee of $1,570.00 per acre times the 90.58 acres being annexed for a total connection fee of $142,210.60. The City agrees to reimburse Developer for said Connection Fee subject to the following conditions: (1) the reimbursement shall be repaid semi-annually from wastewater impact fees collected from the same benefit district the Property is located in; (2) in no event shall reimbursement exceed the impact fees that would otherwise be due for the entire development of the Property; (3) Developer shall not be entitled to any reimbursement of the Connection Fee in excess of impact fees actually received from development of the Property; and (4) any reimbursement to be paid from impact fees shall not constitute a general obligation or debt of the City.

5. Sanitary Sewer. The City and Developer agree that the following are the sanitary sewer infrastructure improvements necessary to permit the Property to be sewerable and to promote the general health and welfare of the City.

A. Prairie Village Extension. A 10 inch sanitary sewer line extending approximately 955 feet from the terminus of the existing 10 inch sanitary sewer line in North 90th Street is needed in the location generally shown on Exhibit 1, which is attached hereto and incorporated herein by this reference ("Prairie Village Extension"). Developer and City agree the Prairie Village Extension shall be constructed through the City's executive order construction process. The City and Developer acknowledge that the construction of the Prairie Village Extension through the executive order process is dependent upon the acquisition of a sanitary sewer easement from a third party property owner. Consequently, the City agrees that in the event Developer is unable to voluntarily obtain the easement from the third party property owner, the City will use its condemnation power to acquire the easement. Developer shall be responsible to reimburse the City all costs associated with acquisition of the easement. Developer shall also be responsible for the cost associated with upsizing the Prairie Village Extension from an 8-inch sanitary sewer line to a 10-inch sanitary sewer line.

B. Leighton Extension. An 8-inch sanitary sewer line extending from the terminus of the Prairie Village Extension to Leighton Avenue is needed in the location generally shown on Exhibit 2, which is attached hereto and incorporated herein by this reference ("Leighton Extension"). The Leighton Extension shall be constructed by Developer, at its cost, through the executive order process.

C. 90th Street Reconstruction. The City acknowledges that the 10-inch sanitary sewer line that currently exists in North 90th Street between manhole 7 and manhole 28, as shown on Exhibit 3 ("90th Street Sewer") has capacity to serve 66 acres of the Property. City and Developer agree that prior to final platting any portion of the Property that exceeds 66 acres, City shall reevaluate the capacity of the 90th Street Sewer to determine whether it needs to reconstructed as a 12-inch sanitary sewer line in order to serve the remaining acres of the Property. In the event the Director of Public Works and Utilities Department determines reconstruction to upsize the 90th Street Sewer is necessary, Developer shall be responsible, at its cost, for reconstructing the 90th Street Sewer as a 12-inch sanitary sewer line prior to the City's approval of any additional final plats of the Property.

6. **Leighton Avenue.** Developer agrees that Leighton Avenue abutting the Property must be improved to urban standards as a collector street at Developer's cost through the City's executive order construction process before the City will allow the final platting of the North 89th Street, North 91st Street, North 93rd Street, and North 94th Street connections to Leighton Avenue. The paving width shall be approximately 34 feet with no median. An Executive Order must be issued for the construction of Leighton Avenue before the City will approve any final plat of Harrison Heights with single family buildable lots that abut Leighton Avenue. The City, with the cooperation of the Developer, shall acquire all temporary and permanent nonexclusive easements necessary for the construction and operation of Leighton Avenue as soon as reasonably possible. The costs of the temporary and permanent easements including, but not limited to, the amount of any condemnation award, court costs, expert witness fees, testing fees, interest, and City staff time shall be paid by the Developer. The City is authorized to utilize condemnation, if necessary, to acquire the temporary and permanent easements.

7. **Rural Fire Protection District.** Developer understands and acknowledges that the City may not annex the Property lying within the boundaries of the Rural Fire Protection District except by the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Property being annexed. Developer desires to be annexed by the City and therefore agrees to pay, prior to annexation, the amount the City has determined must be paid to the Rural Fire Protection District in order for the annexation to be complete, based upon the City's standard formula for calculating such costs.

8. **Future Cost Responsibilities.** Developer understands and acknowledges that the proposed development of the Property shall be subject to the payment of Impact Fees and Developer agrees to pay said Impact Fees.

9. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Property.

10. **Amendments.** This Agreement may only be amended or modified in writing signed by the parties to this Agreement.

11. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

12. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

13. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

14. Construction. Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

15. Relationship of Parties. Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any party shall be deemed or construed by the City, Developer, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.

16. Assignment. In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the other parties to this Agreement.

17. Default. Developer and City agree that the annexation, preliminary plat, and change of zone promote the public health, safety, and welfare so long as Developer fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Developer defaults in fulfilling any of its covenants and responsibilities as

set forth in this Agreement, the City may in its legislative authority rescind said preliminary plat and rezone the Property to its previous designation or such other designations as the City may deem appropriate under the then existing circumstances, or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the Developer may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach.

18. Definitions. For purposes of this Agreement, the words and phrases "cost" or "entire cost" of a type of improvement shall be deemed to include all design and engineering fees, testing expenses, construction costs, publication costs, financing costs, and related miscellaneous costs. For the purposes of this Agreement, the words and phrases "building permit," "development," "Impact Fee Facility," "Impact Fee Facility Improvement," and "site-related improvements" shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.

19. Recordation. This Agreement or a notice or memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Developer's cost and expense.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

ATTEST:

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

_____
City Clerk

By:_____
Coleen J. Seng, Mayor

DEVELOPMENTS UNLIMITED, LLP, a Nebraska limited liability partnership

By: **RIDGE DEVELOPMENT COMPANY**, a Nebraska corporation, General Partner

By: _____
Thomas E. White
President of Development

By: _____
John C. Brager
President of Construction

By: **SOUTHVIEW, INC.**, a Nebraska corporation, General Partner

By: _____
John F. Schleich, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

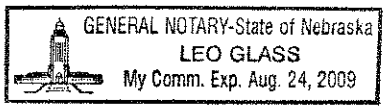
The foregoing was acknowledged before me this 17 day of April, 2006, by Thomas E. White, President of Development of Ridge Development Company, a Nebraska corporation, as a General Partner of **Developments Unlimited, LLP**, a Nebraska limited liability partnership, on behalf of the limited liability partnership.

GENERAL NOTARY-State of Nebraska
LEO GLASS
My Comm. Exp. Aug. 24, 2009

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

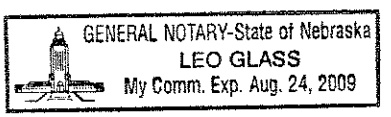
The foregoing was acknowledged before me this 12 day of April, 2006, by John C. Brager, President of Construction of Ridge Development Company, a Nebraska corporation, as a General Partner of **Developments Unlimited, LLP**, a Nebraska limited liability partnership, on behalf of the limited liability partnership.



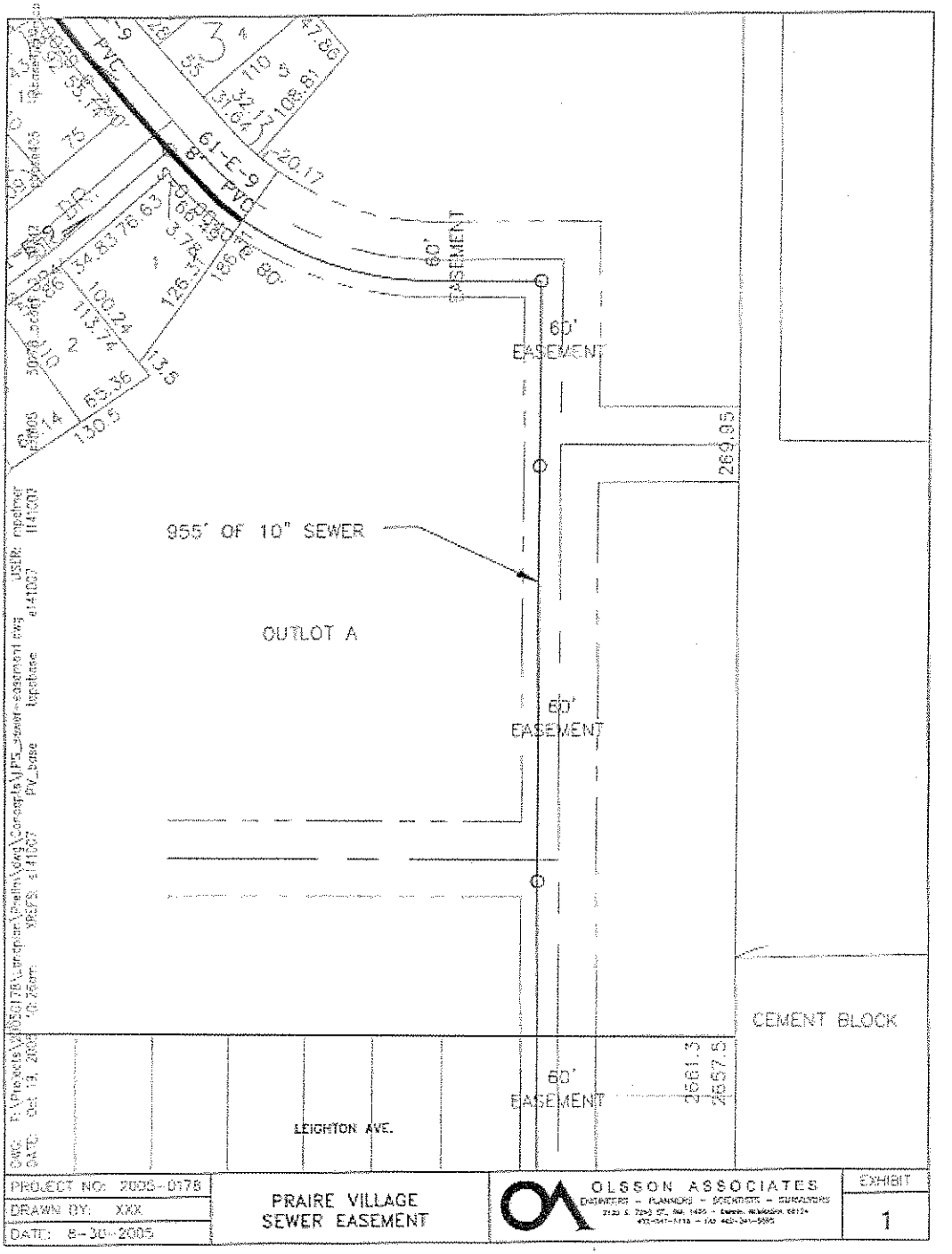
Leo Glass
Notary Public

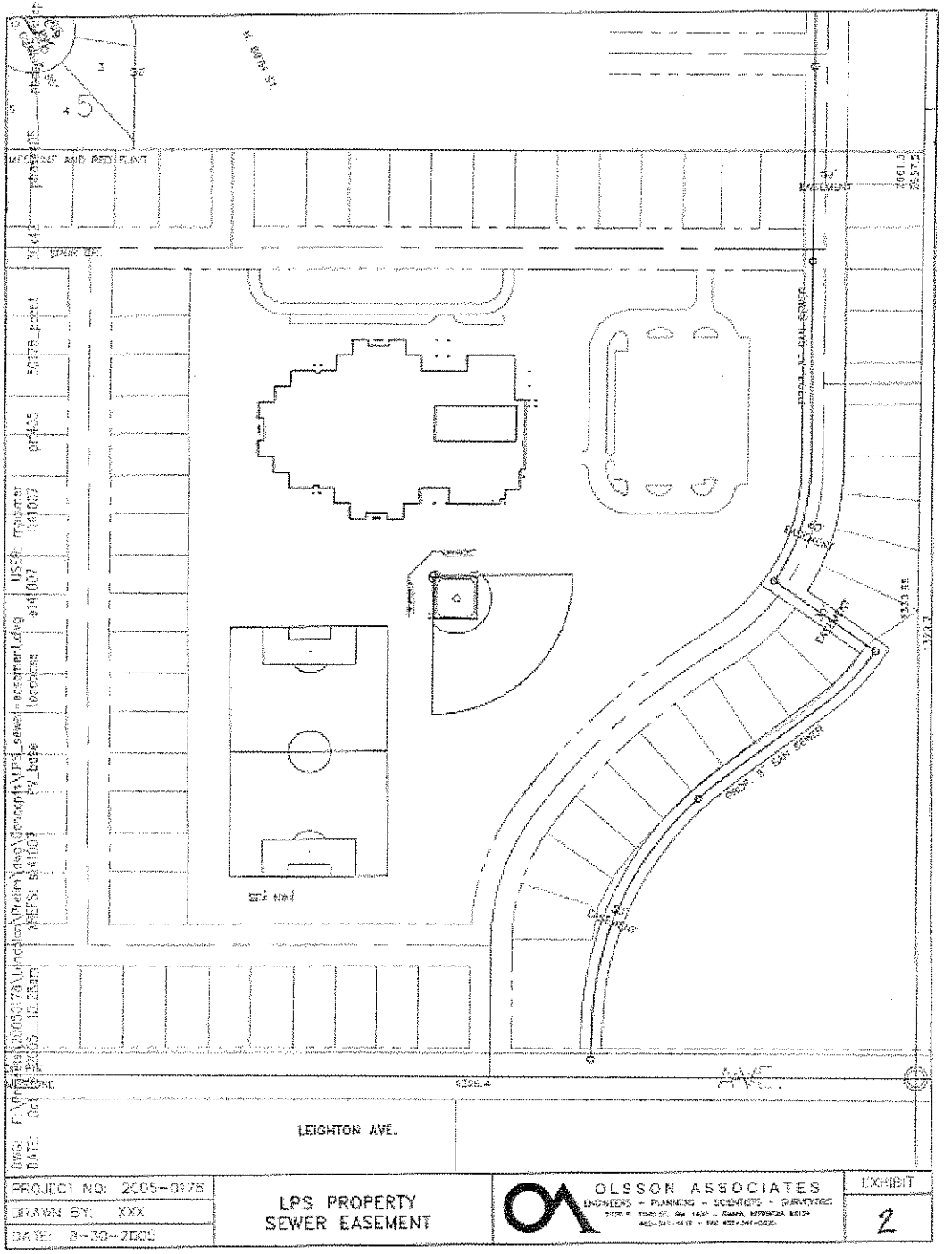
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

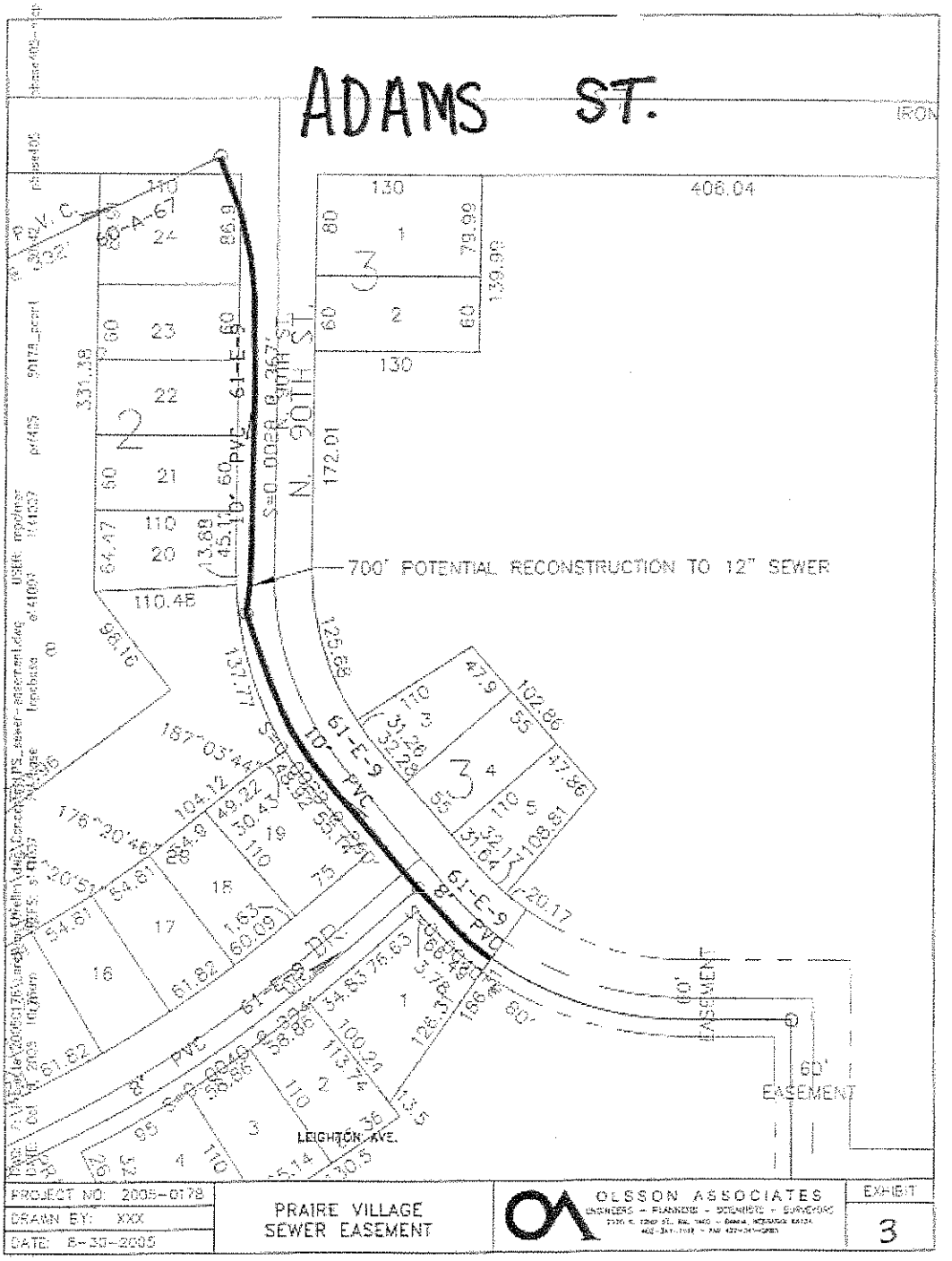
The foregoing was acknowledged before me this 12 day of April, 2006, by John F. Schleich, President of Southview, Inc., a Nebraska corporation, as a General Partner of **Developments Unlimited, LLP**, a Nebraska limited liability partnership, on behalf of the limited liability partnership.



Leo Glass
Notary Public


955' OF 10" SEWER
OUTLOT A
60' EASEMENT
60' EASEMENT
60' EASEMENT
60' EASEMENT
269.95
CEMENT BLOCK
2561.3
2657.5
LEIGHTON AVE.
PROJECT NO: 2005-0178
DRAWN BY: XXX
DATE: 8-30-2005
PRAIRE VILLAGE
SEWER EASEMENT
OLSSON ASSOCIATES
ENGINEERS - PLANNERS - SCIENTISTS - SURVEYORS
EXHIBIT
1


LEIGHTON AVE.
PROJECT NO: 2005-0178
DRAWN BY: XXX
DATE: 8-30-2005
LPS PROPERTY
SEWER EASEMENT
OLSSON ASSOCIATES
ENGINEERS - PLANNERS - SCIENTISTS - SURVEYORS
EXHIBIT
2


ADAMS ST.
700' POTENTIAL RECONSTRUCTION TO 12" SEWER
LEIGHTON AVE.
60' EASEMENT
PROJECT NO: 2005-0178
DRAWN BY: XXX
DATE: 6-30-2005
PRAIRE VILLAGE
SEWER EASEMENT
OLSSON ASSOCIATES
EXHIBIT
3